

**REMARKS**

Claims 1-14 are pending. Claims 1-14 are rejected. Claims 1, 3 and 14 have been amended. New claims 15-29 have been added. Reconsideration of the claims is requested in light of the following remarks.

***Claim Rejections – 35 USC 112***

Claims 1-14 are rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement. The applicant respectfully traverses the examiner's rejection.

With regard to claim 1, the applicant respectfully traverses the examiner's rejection. The element of "indicated refusal of the incoming call to the incoming caller when the deny flag is set" is supported in the present specification as originally filed. As indicated by the examiner, support for this element is included on page 4 of the present specification, lines 26-31. Particularly, the specification states that setting the deny flag will result in the refusal of incoming calls (lines 28 and 29). Even though the call is refused and therefore not answered, the call is still *received*, and thus the incoming call can set a ring flag (see page 4, lines 11-13). Indeed, the ring flag may be used to cause the present CPU utilization value input to be updated (lines 22-23). Therefore claim 1 is allowable under 35 USC 112.

With regard to claim 3, the applicant respectfully traverses the examiner's rejection. The element of "indicating refusal of the new incoming call to the incoming call caller before the incoming call is answered" is supported in the present specification as originally filed for at least similar reasons as recited with regard to claim 1. The specification describes that a call is *received* and sets a ring flag but is then refused if a deny flag is set (see page 4 of the present specification, lines 10 *et seq.*) Therefore claim 3 is allowable under 35 USC 112.

With regard to claim 7, the applicant respectfully traverses the examiner's rejection. The element of "to refuse the incoming call if the deny flag is set prior to and without ever answering the incoming call" is supported in the present specification as originally filed for at least similar reasons as recited with regard to claim 1. The specification describes that a call is *received* and sets a ring flag but is then refused if a deny flag is set (see page 4 of the present specification, lines 10 *et seq.*) Therefore claim 7 is allowable under 35 USC 112. Claims 2, 4-6, and 8-13 are also allowable under 35 USC 112.

With regard to claim 14, the applicant respectfully traverses the examiner's rejection. The subject matter of a claim need not be described literally in the disclosure to satisfy the written description requirement (see MPEP 2163.02, third paragraph). The specification clearly delineates between those calls that are *accepted* and that consume call-handling

Docket No. 2705-94

Page 7 of 9

Application No. 09/544,196

resources (see page 1 of the present specification, lines 14-22) and those calls that are *refused* (see page 4 of present specification, lines 27-29. One of ordinary skill in the art would recognize that the phrase "temporarily refuse incoming calls" used in the claims refers to *accepting* calls (and thus consuming call handling resources) but not immediately *answering* the calls. However, the applicant has amended claim 14 to remove the phrase "temporarily refuse incoming calls". Therefore claim 14 is allowable under 35 USC 112.

#### *New claims*

The examiner's February 25, 2004 response to arguments addressed the applicant's arguments to distinguish between temporarily and permanently dropping a call. The examiner stated:

Even without [new matter issues], the applicant's arguments attempt to distinguish between temporarily and permanently dropping a call. The ability to temporarily deny calls requires additional capabilities, such as a queue. Such a capability is likely [to] have been developed so as to avoid refusing a call.

The inventions disclosed in the present application may be used in conjunction with other packet telephony improvements, including queuing technology. The present application page 1, lines 22 and 23, indicates "it is possible that a central processing unit will reach maximum utilization before other call-handling resources are exhausted. When this happens, the CPU or CPUs cannot process all of the data packets in a timely matter." This statement and other statements indicate that aspects of the present invention are directed toward preventing CPUs from being overloaded when *call-handling resources* have not yet reached exhaustion. Therefore, aspects of the present invention obviously are intended to be used in conjunction with systems retaining call-handling resources, including queuing technology. New claims 15-29 have been added to clarify that aspects of the present invention may be used in conjunction with a queue or a system to accept calls without answering them.

The system disclosed in Shaffer does not stop accepting calls and continues to put calls in a queue despite processor resources. The applicant has stated this before, for example in a response to the examiner's July 30, 2003 office action where the remarks stated, "[t]he call in Shafer is never denied as specified in claim 1 and the other independent claims, but simply put on hold until adequate resources become available." The remarks continued, "... [in] Shafer where the call is never immediately nor permanently refused." Finally the remarks finished by stating, "Shafer even admits that placing these calls on hold wastes gateway bandwidth and thus reduces the amount of available processing capacity for

processing currently established calls. Col. 7, lines 34-40." Accordingly, the system disclosed in Shafer would suffer when the CPU reaches maximum CPU processing capacity processing established calls and accepted but unanswered calls. The system, despite overloaded processor resources, would continue accepting calls and further overloading already overloaded processor resources. For at least that Shafer does not teach refusing calls, Shafer does not teach each and every element of new claims 15-29.

### CONCLUSION

For the foregoing reasons, reconsideration and allowance of claims 1-14 of the application as amended is solicited. Allowance of new claims 15-29 is also solicited. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

I hereby certify that this correspondence is being transmitted to the U.S. Patent and Trademark Office via facsimile number (703) 872-9306, on October 21, 2004.

Signature

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Respectfully submitted,

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